



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

June 11, 1992

Mr. W. F. Palmer
City Attorney
City of Marshall
P. O. Box 698
Marshall, Texas 75671

OR92-335

Dear Mr. Palmer:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 16126.

The City of Marshall received an open records request for "a report from Carl Holmes & Associates assessing candidates for the position of Chief of the Marshall Fire Department." You contend that the requested information may be withheld pursuant to section 3(a)(11) of the Open Records Act.

You received the request for information on April 20, 1992. You requested a decision from this office on May 15, 1992. Consequently, you failed to request a decision within the 10 days required by section 7(a) of the act.

Section 7(a) of the act requires a governmental body to release requested information or to request a decision from the attorney general within 10 days of receiving a request for information the governmental body wishes to withhold. When a governmental body fails to request a decision within 10 days of receiving a request for information, the information at issue is presumed public. *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379 (Tex. App.--Austin 1990, no writ); *City of Houston v. Houston Chronicle Publishing Co.*, 673 S.W.2d 316, 323 (Tex. App.--Houston [1st Dist.] 1984, no writ); Open Records Decision No. 319 (1982). The governmental body must show a compelling interest to withhold the information to overcome this presumption. *See id.*

You state that the city withheld the requested report at the time of the open records request because "[the report] represented only a preliminary and incomplete evaluation and assessment by the consultant . . . and was believed [by the city] to be clearly exempted from release under 6252-17a, Section 3(a)(11)." You have cited the previous open records decisions upon which the city relied. This office has previously held, however, that the requirement under section 7(a) to request an open records decision where "there has been no previous determination that [the requested information] falls within one of the exceptions" can be fairly read as eliminating the need for a decision request only when the precise information at issue has been determined to be excepted from disclosure, where only the *standard* to be applied has been addressed and the *applicability* of the standard to particular information must be determined by the Attorney General. Open Records Decision No. 435 (1986).

This office has not previously ruled that the information at issue is excepted from required public disclosure. Accordingly, we find that you have not in this instance requested an open records decision in a timely manner nor have you shown compelling reasons why the information at issue should not be released. The information is presumed to be public and must be released. Please note, however, that this ruling applies only to the preliminary report as it existed at the time the open records request was made and not to the final report. *See* Open Records Decision No. 452 (1986) (document is not within the purview of the act if it does not exist at the time the open records request is received).

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please refer to OR92-335.

Yours very truly,

A handwritten signature in cursive script that reads "Susan Garrison".

Susan Garrison
Assistant Attorney General
Opinion Committee

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SG/RWP/lmm

Ref: ID# 16126

cc: Mr. John Gordon
General Manager
KCUL Radio
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